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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1959

No. 228

BERNICE (TERRY) TAYLOR,
Petitioner,

vs.

TRADEWIND TRANSPORTATION COMPANY, LIMITED, (Formerly known as Allen Tours of Hawaii, Ltd.),
Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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Petitioner respectfully requests the Court to grant a writ of certiorari to the United States Court of Appeals for the Ninth Circuit, and in support of her petition states:

OPINIONS IN LOWER COURT.

The opinion of the Court of Appeals for the Ninth Circuit upon respondent's appeal from the United States District Court for the District of Hawaii is reported in 265 F. 2d ..... The opinion of the Court of Appeals upon petitioner's Petition for a Rehearing is reported in 265 F. 2d ..... Said opinions are appended hereto.

STATEMENT AS TO JURISDICTION.

The judgment sought to be reviewed is dated April 21, 1959 and was entered April 21, 1959. An order directing filing of opinion on petition for rehearing was entered June 9, 1959. Section 1254, United States Code confers on this court jurisdiction to review the judgment by writ of certiorari.

QUESTIONS PRESENTED.

A. Whether the state or federal test of sufficiency of the evidence to support a jury verdict applies where federal jurisdiction is rested on diversity of citizenship, the Courts of Appeals not being in agreement on this question.

B. Whether the evidence was sufficient under the law of Hawaii, the Hawaii rule being more liberal than the federal "substantial evidence" rule.

C. Whether the Court of Appeals for the Ninth Circuit in this case departed from the accepted and

usual course of judicial proceedings so as to call for an exercise of this court's power of supervision.

STATEMENT OF THE CASE.

Petitioner obtained a judgment against respondent on November 8, 1957 in the United States District Court for the District of Hawaii pursuant to a jury verdict in her favor in the amount of $14,545. Jurisdiction of the district court was based on diversity of citizenship. Petitioner's action was one for personal injuries sustained June 13, 1956 as a result of a fall on the steps of the Soto Mission Temple in Honolulu, Hawaii. Respondent is a carrier which brought petitioner to the temple as a member of a tour party. Petitioner produced evidence that respondent's tour conductor had visited the temple premises many times before and knew that they were dangerous when wet, as they were on the date of petitioner's accident. The testimony of respondent's tour conductor as to how he obtained knowledge of the dangerous condition of the premises is set forth in the record at page 169 and following and at pages 172 and 173. The trial court instructed the jury (record, pages 39 and 40 and page 24) that it could find for petitioner if it found a dangerous condition to have existed at the temple which respondent or its authorized employee knew of prior to the date of petitioner's accident. On appeal respondent relied on several points, including the ground that the evidence was insufficient to establish any breach on its part of a duty owed to petitioner.